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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,657	04/18/2005	Karina Drumm	129402.00201	9864

7590
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04/21/2010

EXAMINER

WOLLENBERGER, LOUIS V

ART UNIT	PAPER NUMBER
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1635

MAIL DATE	DELIVERY MODE
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04/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/511,657	Applicant(s) DRUMM ET AL.	
	Examiner Louis Wollenberger	Art Unit 1635	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1, 4-6, 9, 16, 94, 95, and 97-99.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Louis Wollenberger/
 Primary Examiner, Art Unit 1635
 April 19, 2010

Continuation of 3. NOTE: The amendment to the claims filed 4/15/2010 incorporates the limitations of claim 99 into independent claim 1, and therefore, into each claim depending from claim 1. In fact, each of dependent claims 4, 5, and 95 have also been expressly amended with the limitations of former claim 99 such that claims 4 and 5 now require a search and examination of the method of claim 1 wherein the autosomal recessive retinitis pigmentosa or congenital stationary night blindness is related to angiogenesis and/or neovascularization, retinal pigment epithelium (RPE), neurosensory retina, choroid, or a combination of RPE, neurosensory retina, or choroid. These specific limitations have not been previously searched or examined on the merits in the context of the claimed method and it is not immediately clear that claims 4 and 5 as amended on 4/15/2010 overlap in scope with claims 4 and 5 as previously presented on 11/12/2009.

Furthermore, Applicant has also amended dependent claim 95, which is drawn to the method of claim 1, and now requires a search and consideration of a step for diagnosing a subject with autosomal recessive retinitis pigmentosa or congenital stationary night blindness or a predisposition to autosomal recessive retinitis pigmentosa or congenital stationary night blindness, which also has not been previously searched or examined on the merits in the context of the claimed method. Additionally, dependent claim 97, which is drawn to the method of claim 1 further comprising "isolating the target gene," would now require an assessment of not only the genus of target genes that specifically give rise to ARRP and CSNB but also methods of isolating these specific target genes before, after, and/or during the course of the treatment method defined by claim 1.

Continuation of 13. Other: Applicant's arguments accompanying the proposed amendments to the claims are noted but have not been considered because they are directed to the after-final amendments to the claims, 4/15/2010, which have not been entered for the reasons given above.